## APPENDIX

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF IOWA**
**CEDAR RAPIDS DIVISION**

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| UNITED STATES OF AMERICA,<br>Plaintiff,<br>vs.<br>WILLIAM MEYER,<br>Defendant. | No. 19-CR-105-CJW-MAR<br>**ORDER** |

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**TABLE OF CONTENTS**

## *I. INTRODUCTION*

This matter is before the Court on a Report and Recommendation ("R&R") (Doc. 34) of the Honorable Mark A. Roberts, United States Magistrate Judge. On December 5, 2019, defendant filed a motion to suppress. (Doc. 25). On December 12, 2019, the government timely filed a resistance. (Doc. 30). On December 18, 2019, Judge Roberts held a hearing on defendant's motion. (Doc. 31). On January 23, 2020, Judge Roberts issued his R&R, recommending that the Court deny defendant's motion. (Doc. 34). The deadline for filing objections to the R&R was February 6, 2020. On February 6, 2020, defendant filed both factual and legal objections to the R&R (Doc. 43) and the government filed only factual objections (Doc. 44).

For the following reasons, the Court **sustains in part** and **overrules in part** defendant's objections (Doc. 43), **sustains** the government's objections (Doc. 44), **adopts** Judge Roberts' R&R (Doc. 34) with modification, and **denies** defendant's motion to suppress (Doc. 25).

## *II. STANDARD OF REVIEW*

The Court reviews Judge Roberts' R&R under the statutory standards found in Title 28, United States Code, Section 636(b)(1):

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

*See also* FED. R. CIV. P. 72(b) (stating identical requirements). While examining these statutory standards, the United States Supreme Court explained:

> Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue de novo if no objections are filed, it does not

> preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard.

*Thomas v. Arn*, 474 U.S. 140, 154 (1985). Thus, a district court may review de novo any issue in a magistrate judge's report and recommendation at any time. *Id.* If a party files an objection to the magistrate judge's report and recommendation, however, the district court must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). In the absence of an objection, the district court is not required "to give any more consideration to the magistrate's report than the court considers appropriate." *Thomas*, 474 U.S. at 150.

De novo review, of course, is nondeferential and generally allows a reviewing court to make an "independent review" of the entire matter. *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991) (noting also that "[w]hen de novo review is compelled, no form of appellate deference is acceptable"); *see Doe v. Chao*, 540 U.S. 614, 620–19 (2004) (noting de novo review is "distinct from any form of deferential review"). The de novo review of a magistrate judge's report and recommendation, however, only means a district court "'give[s] fresh consideration to those issues to which specific objection has been made.'" *United States v. Raddatz*, 447 U.S. 667, 675 (1980) (quoting H.R. Rep. No. 94–1609, at 3, reprinted in 1976 U.S.C.C.A.N. 6162, 6163 (discussing how certain amendments affect Section 636(b))). Thus, although de novo review generally entails review of an entire matter, in the context of Section 636 a district court's required de novo review is limited to "de novo determination[s]" of only "those portions" or "specified proposed findings" to which objections have been made. 28 U.S.C. § 636(b)(1).

Consequently, the Eighth Circuit Court of Appeals has indicated de novo review would only be required if objections were "specific enough to trigger de novo review."

*Branch v. Martin*, 886 F.2d 1043, 1046 (8th Cir. 1989). Despite this "specificity" requirement to trigger de novo review, the Eighth Circuit Court of Appeals has "emphasized the necessity . . . of retention by the district court of substantial control over the ultimate disposition of matters referred to a magistrate." *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994). As a result, the Eighth Circuit has concluded that general objections require "full de novo review" if the record is concise. *Id.* ("Therefore, even had petitioner's objections lacked specificity, a de novo review would still have been appropriate given such a concise record."). Even if the reviewing court must construe objections liberally to require de novo review, it is clear to this Court that there is a distinction between making an objection and making no objection at all. *See Coop. Fin. Ass'n v. Garst*, 917 F. Supp. 1356, 1373 (N.D. Iowa 1996) ("The court finds that the distinction between a flawed effort to bring objections to the district court's attention and no effort to make such objections is appropriate.").

In the absence of any objection, the Eighth Circuit Court of Appeals has indicated a district court should review a magistrate judge's report and recommendation under a clearly erroneous standard of review. *See Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting when no objections are filed and the time for filing objections has expired, "[the district court judge] would only have to review the findings of the magistrate judge for clear error"); *Taylor v. Farrier*, 910 F.2d 518, 520 (8th Cir. 1990) (noting the advisory committee's note to FED. R. CIV. P. 72(b) indicates "when no timely objection is filed the court need only satisfy itself that there is no clear error on the face of the record"); *Branch*, 886 F.2d at 1046 (contrasting de novo review with "clearly erroneous standard" of review, and recognizing de novo review was required because objections were filed).

The court is unaware of any case that has described the clearly erroneous standard of review in the context of a district court's review of a magistrate judge's report and

recommendation to which no objection has been filed. In other contexts, however, the Supreme Court has stated the "foremost" principle under this standard of review "is that '[a] finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Thus, the clearly erroneous standard of review is deferential, *see Dixon v. Crete Med. Clinic, P.C.*, 498 F.3d 837, 847 (8th Cir. 2007) (noting a finding is not clearly erroneous even if another view is supported by the evidence), but a district court may still reject the magistrate judge's report and recommendation when the district court is "left with a definite and firm conviction that a mistake has been committed," *U.S. Gypsum Co.*, 333 U.S. at 395.

Even though some "lesser review" than de novo is not "positively require[d]" by statute, *Thomas*, 474 U.S. at 150, Eighth Circuit precedent leads this Court to believe that a clearly erroneous standard of review should generally be used as the baseline standard to review all findings in a magistrate judge's report and recommendation that are not objected to or when the parties fail to file any timely objections, *see Grinder*, 73 F.3d at 795; *Taylor*, 910 F.2d at 520; *Branch*, 886 F.2d at 1046; *see also* FED. R. CIV. P. 72(b) advisory committee's note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). In the context of the review of a magistrate judge's report and recommendation, the Court believes one further caveat is necessary: a district court always remains free to render its own decision under de novo review, regardless of whether it feels a mistake has been committed. *See Thomas*, 474 U.S. at 153–54. Thus, although a clearly erroneous standard of review is deferential and the minimum standard

appropriate in this context, it is not mandatory, and the district court may choose to apply a less deferential standard.

## *III. FACTUAL BACKGROUND*

After reviewing the record, the Court finds that, except where noted, Judge Roberts accurately and thoroughly stated the relevant facts in his R&R. (Doc. 34, at 2-6). Thus, the Court adopts Judge Roberts' factual findings as set out below with modification. (*See id.*)

> The search and seizure of Defendant's computer towers, hard drive, and cell phone ("the devices") at the heart of this dispute occurred on July 3, 2019. However, the investigation of Defendant commenced in 2017. In early 2017, Operation Dark Room was an ongoing investigation of livestream sex abuse of minor victims located in the Philippines. (Ex. D ¶ 11.) The FBI obtained information that Ann Marie Simbulas Santos [("Santos")] was involved in the production and distribution of livestream child pornography from the Philippines. (*Id.* ¶ 12.) The FBI identified an email address and PayPal account for Santos. (*Id.*)
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> The FBI also obtained information about the Cruz family that lived near Santos and was also "tied to subjects investigated or arrested for sexually exploiting children." (*Id.* ¶ 13.) A Canadian citizen admitted to sending members of the Cruz family Western Union money transfers to purchase child exploitation images. *Id.* The FBI had learned that Marynel Cruz was associated with individuals known to be involved in child sex tourism and that her daughter, [I.C.], was a minor and a believed victim of webcam child sex tourism. (*Id.* ¶ 16.)
>
> [Special Agent Casey] Maxted's [("SA Maxted")] affidavit in support of the warrant to search the previously seized devices stated that Defendant's PayPal account paid $102,633.80 to Santos's account from January 20, 2012 through August 18, 2014 for "no apparent business purpose" according to PayPal. (*Id.* ¶ 14.) SA Maxted later determined that the figure was incorrect. In fact, Defendant had sent Santos approximately $2,500. (Maxted Hr'g Test. at 7.)
>
> The FBI had learned Defendant had a Skype account registered to wmeyer2@mchsi.com. The full user name is "prettyvirginfilipino" and is registered to an "[I.] Meyer."[1] (Ex. D ¶ 17.) The FBI had also obtained

[1] The first name on defendant's Skype account appears to be a variation of I.C.'s first name.

information showing Defendant transferred money or attempted transfers to members of the Cruz family and Santos on dates known and unknown but most recently on March 2, 2017. (*Id.* ¶ 15.)

On July [3], 2019, SA Maxted and Iowa Division of Criminal Investigation Special Agent Michael McVey [("SA McVey")] conducted a "knock and talk" interview of Defendant outside his residence in Cedar Rapids where he lives with his wife Lori. [(Doc. 26, at 1)].[2] The interview occurred in SA McVey's vehicle. (*Id.*) Prior to that interview SA Maxted did not attempt to obtain a search warrant because he believed the information he had was stale and he would not be able to obtain a warrant. (Maxted Hr'g Test. at 23.) SA Maxted's report of that interview summarizes the events as follows:

> During the course of the interview, MEYER provided information that provided probable cause for a search warrant. (Note: MEYER's interview is recorded and submitted to the captioned case file.) SA Maxted and SA McVey attempted to get consent to search from MEYER. MEYER declined and left the interview, which was conducted in front of his residence in SA McVey's official vehicle, and returned to his residence.
>
> SA Maxted contacted AUSA Mark Tremmel to advise of the interview and intelligence gathered. It was determined that an exigent circumstance existed and SA McVey and the writer could seize items that could potentially hold evidence of a crime.

(Ex. B.) The interview began at 9:26 a.m. and concluded at 10:09 a.m. SA Maxted testified that he was concerned Defendant was going to destroy evidence. During the interview he repeatedly warned Defendant it was a crime to destroy evidence. (Maxted Hr'g Test. at 65). Defendant repeatedly proposed setting a date to turn items over for inspection. (*Id.*) Thereafter, SA Maxted knocked on the door of Defendant's residence and announced he intended to seize Defendant's devices based on exigence. (*Id.* at 52). SA Maxted did not ask permission to enter.

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[2] The R&R originally cited the date of the interview as July 2, 2019. This finding was likely transcribed from a typographical error in Exhibit D. (Doc. 26, at 19). The recording and other documents indicate the interview occurred on July 3, 2019. *See, e.g.*, (Ex. A at 0:10).

Because SA Maxted testified to his belief that probable cause was "stale" prior to the interview with Defendant, it is helpful to examine specifically what he learned from the interview that "freshened" up his determination of probable cause. Specifically, SA Maxted testified that he obtained the following new information during the interview:

- Jade Hassan [("Hassan")] is an adult prostitute in the [United States].[3] (Maxted Hr'g Test. at 44.) Prior to the interview, SA Maxted knew that Defendant was acquainted with her and had given her money. Hassan is the "known adult prostitute" referred to in the search warrant affidavit. (Ex. D ¶15.) During the interview, SA Maxted learned that Defendant claimed he had given Hassan money to assist her. (Maxted Hr'g Test. at 45.) He also learned Defendant had not disclosed this money transfer to his wife. (*Id.*)
- [Although SA Maxted knew that defendant had travelled to the Philippines in the past, SA Maxted learned during the interview that defendant] stays with the Cruz family [while in the Philippines].[4] (*Id.* at 46-47.) SA Maxted learned that Defendant sent money to the Cruz family for various necessities, including food, medicine, and school supplies. (*Id.* at 47.)
- [During the interview, defendant told SA Maxted that defendant thought I.C.] was 19 years old. (*Id.*)[5]

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[3] Defendant objected to the R&R's original finding that Hassan resides in the Philippines. (Doc. 43, at 1). The government agreed with this objection. (Doc. 44, at 1). The record shows that Hassan resides in the United States. (Doc. 26, at 10); (Ex. A at 21:36). Defendant also objects, however, to "any conclusion that law enforcement did not know that [Hassan] was a prostitute until" the interview. (Doc. 43, at 1). Officers did know this information in advance of the interview, (Doc. 38, at 26-27, 46), but the R&R does not contradict this fact. The R&R merely states that SA Maxted learned during the interview that defendant claimed to give Hassan money to assist her and that defendant did not tell his wife about that transfer. Both these facts are accurate. (*Id.*, at 46-47). Thus, no further alteration is necessary beyond correcting Hassan's residence.

[4] Defendant objected to the R&R's original finding that the officers learned for the first time during the interview that defendant had travelled to the Philippines in the past. (Doc. 43, at 1). The government agreed with this objection. (Doc. 44, at 1); *see also* (Doc. 38, at 19, 48, 62). Thus, the Court has altered the R&R accordingly.

[5] The government objected to the R&R's original phrasing of these facts. (Doc. 44, at 1-2). The Court found alteration appropriate to reflect not what defendant believed but simply what

- Prior to the interview, SA Maxted knew that Defendant had sent several thousand dollars to the Philippines. (*Id.* at 48.) However, SA Maxted learned that Defendant had not disclosed this information to his wife. (*Id.*)
- Prior to the interview, SA Maxted did not know Defendant spoke with the Cruz family. (*Id.*) As a result of the interview, SA Maxted learned that Defendant spoke with them on a weekly basis and sometimes several times per week. (*Id.*) SA Maxted learned Defendant had spoken with them in the last week. (*Id.* at 48-49.)
- During the interview, SA Maxted learned Defendant communicated with the Cruz family by cell phone and his desktop computer. He also learned Defendant used Skype to communicate with the Cruz family. (*Id.*)
- Prior to his interview with Defendant, SA Maxted knew about Defendant's Skype account, but had not tied Defendant's Skype account "[I.] Meyer" with the user name "prettyvirginfilipino" to the Cruz family. (*Id.*) During the interview, SA Maxted learned that Defendant had used these accounts to communicate with the Cruz family. (*Id.* at 50.)
- In his interview, Defendant gave an e-mail address different from the one tied to this Skype account and denied using other e-mail addresses. (*Id.* at 10-11.)

Ultimately, SA Maxted testified that the current communications with the Cruz family "freshened" his assessment of probable cause.

After the devices were seized, Defendant signed a form consenting to their search. The Government does not rely on the consent to justify any search or seizure so it does not bear further discussion. That same day, SA Maxted obtained a search warrant that permitted a forensic examination of the previously-seized devices. The forensic examination revealed Defendant's possession of child pornography. On September 9, 2019, a second warrant was issued permitting search of additional devices at Defendant's residence. (Ex. F.) The application for the second warrant relied on information recovered from the devices seized on July 3, including Skype communications showing Defendant and minors engaging in sex acts and displaying their genitals.

(Doc. 34, 2-6) (footnotes and alterations added, original footnotes omitted).

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he told SA Maxted.

## *IV. ANALYSIS*

In his objections, defendant argues that Judge Roberts erred in concluding (1) that probable cause existed for the officers to enter defendant's home and seize his electronic devices, (2) that the exigency here was not improperly created by the officers, and (3) that the good faith exception from *United States v. Leon*, 468 U.S. 897 (1984), applies even if the searches and seizures here were improper. (Doc. 43). The Court will address each argument in turn.

### *A. Probable Cause*

Defendant objects to the R&R's finding that probable cause supported both the officers' entry into his home to seize his electronic devices under the exigency exception to the warrant requirement and the subsequent July 3, 2019 warrant to search such devices. (Doc. 43, at 2-5).[6] Defendant asserts that the information officers possessed before the interview was stale and was not freshened by the interview. Defendant argues that he provided legitimate explanations for his personal and financial associations with the Philippines and the Cruz family. Because officers did not obtain any new information that defendant was involved in child exploitation or pornography, defendant concludes that probable cause was not present to support either the officers' entry into his home or the subsequent warrant to search the seized devices.

Under the Fourth Amendment, probable cause is an objective analysis based on the totality of the circumstances known to the officer at the time of the search or seizure. *Whren v. United States*, 517 U.S. 806, 813 (1996). The facts known by the officer must

[6] Defendant also objects to the R&R's finding that defendant did not argue the first warrant lacked probable cause. (Doc. 43, at 2) (citing (Doc. 34, at 6, 9, 18)). Although this argument was not raised in his motion or brief, defendant notes that it was raised at the hearing. (*Id.*) (citing Doc. 38, at 79-80). Despite the R&R's finding on this issue, Judge Roberts never held that defendant's argument was waived and in fact analyzed whether probable cause was present in the context of exigency. (Doc. 43, at 12-14). Thus, to the extent necessary, the Court finds that defendant's argument that the warrant lacks probable cause has not been waived.

be "sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *United States v. Henderson*, 241 F.3d 638, 648 (9th Cir. 2000). "Probable cause is a fluid concept that focuses on 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *United States v. Colbert*, 605 F.3d 573, 576 (8th Cir. 2010) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)).

There is no dispute here that officers considered their information on defendant's alleged criminal conduct stale before the interview. (Doc. 38, at 24). Officers knew before the interview (1) that Santos, the Cruz family, and others were involved in child exploitation and the international distribution of child pornography, (2) that defendant had sent a significant sum of money to Santos from January 2012 to August 2014, (3) that defendant had sent or attempted to send money to the Cruz family as recently as March 2017, (4) that defendant had travelled to the Philippines in the past, and (5) that defendant had a Skype account registered to wmeyer2@mchsi.com with the username prettyvirginfilipino and profile name [I.] Meyer. (Doc. 34, 2-3).

During the interview, officers learned (1) that defendant had given money to a local adult prostitute for what he claimed was financial support and that he did not disclose such payment to his wife, (2) that defendant admitted to knowing the Cruz family, including I.C., (3) that defendant claimed he thought I.C. was 19-years-old, (4) that defendant stays with the Cruz family when he visits the Philippines, (5) that defendant claimed his payments to the Cruz family were merely financial support and that he did not disclose at least some of these payments to his wife, (6) that defendant spoke with the Cruz family on a weekly basis and sometimes even multiple times per week, (7) that defendant had contacted the Cruz family within the last week, (8) that defendant used both his phone and computer to contact the Cruz family, (9) that defendant used Skype to talk with them, (10) that defendant's Skype username and profile name were tied to

the Cruz family (*id.*, at 4-5), and (11) that defendant's wife never participated in any communications with the Cruz family via Skype (Ex. A at 27:52).

The Court finds that probable cause was present to support both the officers' entry into defendant's home and the subsequent search warrant. As defendant points out, the primary defect with the information possessed by the officers before the interview was its staleness. The officers here were not aware of any recent contact or financial transactions between defendant and other parties known to be involved in international child exploitation and pornography. Indeed, the interview did not produce any further information about financial transactions. It did, however, illuminate defendant's recent and substantial contact with the Cruz family under suspicious circumstances.

Defendant told the officers that he was in frequent contact, as recently as last week, with the Cruz family, whom the officers knew to be involved in child sex tourism. Defendant even stated that he stays at their house when in the Philippines. Although it may not be unusual to stay with friends when overseas, this shows that defendant had strong, personal contact with the Cruz family. Defendant also told the officers that he had sent the Cruz family a substantial sum of money for what he claimed was financial support. Although defendant explained that he gave the Cruz family money for basic necessities, it is notable that defendant claimed similar charitable motives for his transactions with an alleged local prostitute.[7] Defendant could not logically explain how his relationship with this alleged prostitute began. (Ex. A at 22:00, 23:47). Importantly, defendant did not disclose his transactions with the prostitute or the Cruz family to his wife. Defendant's wife also never participated in any Skype communications with the Cruz family, if she ever communicated with them at all. Officers were rightly suspicious that defendant admitted to transferring large sums of money to multiple persons involved in different types of illegal sex work purely for

[7] Defendant also cited altruism to explain transactions with another woman. (Ex. A at 25:32).

charitable purposes without ever telling his wife. Officers were also rightly suspicious that defendant was in regular contact across multiple platforms with persons tied to child exploitation and pornography on a weekly basis to the exclusion of his wife. Compounding too is defendant's denial of contact with other parties associated with child exploitation and pornography, whom the officers knew defendant had sent money to in the past.

Defendant's responses to questions about his email were also suspicious. When asked what email accounts he used, defendant initially responded "wmeyer2" and then corrected himself and said "wmeyet2@gmail.com." (Ex. A at 12:20). Defendant was asked twice if he had or used other emails and he replied no both times. (*Id.*, at 12:45, 13:12). Defendant stated that his Skype account was tied to his wmeyet2@gmail.com address. When SA Maxted told defendant his records showed the email as "wmeyer2," defendant explained that he incorrectly spelled his name when setting up the email address. It is odd at best that someone would misspell their own name in an email address and continue to use the account instead of setting up a new one. Despite being asked about this "wmeyer2" address, defendant still did not mention his wmeyer2@mchsi.com email which the officers knew was linked to defendant's Skype account that he used to communicate with the Cruz family. (*Id.*, at 16:00). It is likely defendant still used this email since he admittedly contacted the Cruz family over Skype as recently as last week. Even if the Court assumes that defendant did have an email called wmeyet2@gmail.com and that he no longer used the wmeyer2@mchsi.com address, his responses are still suspicious and evasive here.

Also relevant to probable cause is the identifying information on defendant's Skype account. After defendant admitted to using Skype to communicate with the Cruz family, the officers were able to link the username (prettyvirginfilipino) and the profile name

([I.] Meyer) to the Cruz family. These names reasonably suggest that the account may have some type of sexual purpose and be related to I.C.

The totality of this new information freshened the information already possessed and would warrant a prudent person in believing that defendant was involved in child exploitation and pornography. *See Whren*, 517 U.S. at 813; *Henderson*, 241 F.3d at 648. Therefore, probable cause was present to support both the officers' entry into defendant's home and the subsequent warrant to search the devices.

Thus, the Court **overrules** defendant's objections on this issue and **adopts** Judge Roberts' R&R without modification.

***B. Exigency***

Defendant objects to the R&R's finding that the officers did not improperly create the exigency here that purportedly excused their entry into defendant's home. (Doc. 43, at 2, 3-4). Specifically, defendant asserts that the officers created the exigency by choosing to perform a knock-and-talk interview.

"It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (quoting *Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (internal quotation marks omitted)). Indeed, "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States v. U.S. Dist. Ct. of Mich., S.D.*, 407 U.S. 297, 313 (1972) (internal quotation marks omitted)). When a warrantless entry and search is conducted in a home, the government bears the burden of proving that an exception to the warrant requirement applies. *United States v. Selberg*, 630 F.2d 1292, 1294 (8th Cir. 1980).

Exigency is a recognized exception to the warrant requirement. *Kleinholz v. United States*, 339 F.3d 674, 676 (8th Cir. 2003). "The exigent circumstances exception

justifies immediate police action without obtaining a warrant if lives are threatened, a suspect's escape is imminent, or evidence is about to be destroyed." *United States v. Ramirez*, 676 F.3d 755, 759 (8th Cir. 2012) (quoting *United States v. Ball*, 90 F.3d 260, 263 (8th Cir. 1996) (alteration omitted)). "When the exigency at issue is destruction of evidence, police officers must demonstrate a sufficient basis for an officer to believe that somebody in the residence . . . will immediately destroy evidence." *Id.*, at 760 (citing *United States v. Clement*, 854 F.2d 1116, 1119 (8th Cir. 1988)). "The risk that evidence will be destroyed during the time required to obtain a search warrant can be an exigent circumstance that justifies a warrantless entry." *United States v. Leveringston*, 397 F.3d 1112, 1116 (8th Cir. 2005). Further, exigency must be accompanied by probable cause. *Kleinholz*, 339 F.3d at 676.

The Court finds that exigency was present here. Following the interview, defendant was fully aware of the officers' investigation. With this knowledge, defendant refused to allow the search of his electronic devices, as is his right. Instead of invoking his rights though, defendant made a variety of excuses to the officers; that he used the devices too frequently to turn them over, that his house was too messy to allow the officers inside, that the officers' requests were too ambiguous, and so on. (Ex. A at 28:36–42:28). At several points, defendant offered to turn over his devices on a later date or requested time alone with them before the search. (*Id.*, at 29:48, 32:16, 33:09). Both officers repeatedly expressed their concerns about spoliation. Moreover, SA Maxted informed defendant that if defendant did not consent to a search that day, the officers would return with a search warrant. (*Id.*, at 31:42). At this time, the officers had probable cause to believe that defendant's devices would contain evidence of child exploitation and pornography. Defendant, after giving the officers that probable cause, was in custody of those devices with full knowledge that he was the subject of an FBI investigation. Defendant's repeated requests to turn over the devices later or have time

alone with them posed a real risk of spoliation which was not effectively mitigated by the officers' warnings. Under these circumstances, it was reasonable for the officers to believe that defendant would destroy his electronic devices or delete the evidence therein before a search warrant could be obtained.

The more nuanced question is whether police created this exigency. Under the police-created exigency doctrine, an exception to the exigent circumstances rule, "police may not rely on the need to prevent destruction of evidence when that exigency was created or manufactured by the conduct of the police." *Ramirez*, 676 F.3d at 760-61 n.3 (quoting *Kentucky v. King*, 563 U.S. 452, 461 (2011) (internal quotation marks omitted)). In *United States v. Ramirez*, the Eighth Circuit Court of Appeals held in discussing this exception that "when the police knock on a door but the occupants choose not to respond or speak, or maybe even choose to open the door and then close it, or when no one does anything incriminating, the officers must bear the consequences of the method of investigation they've chosen." 676 F.3d at 758. "[I]n some sense the police always create the exigent circumstances that justify warrantless entries and arrests. But the police do not necessarily act impermissibly any time they create an exigency in a strict causal sense." *United States v. Cisneros-Gutierrez*, 598 F.3d 997, 1005 (8th Cir. 2010). Thus, courts must determine "the reasonableness and propriety of the investigative tactics that generated the exigency." *Id.* "Where . . . the police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent destruction of evidence is reasonable and thus allowed." *King*, 563 U.S. at 462.

The Court finds that the exigency here was neither created nor manufactured by the officers. "Police officers regularly rely on a knock-and-talk as an investigative strategy when they do not have enough evidence to obtain a search warrant." *Cisneros-Gutierrez*, 598 F.3d at 1006. In *United States v. Cisneros-Gutierrez*, the Eighth Circuit

Court of Appeals held that the knock-and-talk investigation at issue "was a reasonable and proper investigative strategy that did not foreseeably increase the likelihood of the destruction of evidence." *Id.* (upholding the officers' entry into a private residence during a knock-and-talk after observing another individual in the residence appear to dispose of drugs down a sink). This tactic is unlike tactics in other cases where the destruction of evidence was the "probable result." *Id.*, at 1005 (citing *United States v. Duchi*, 906 F.2d 1278, 1285 (8th Cir. 1990) (finding that the officers' tactic of allowing the suspect to pick up and return home with a package of cocaine did not justify entry into the suspect's home because officers created a scenario where the destruction of evidence was probable) (abrogated in part)). Although the court acknowledged that "destruction of evidence is a possible result of a knock-and-talk, other likely results include the grant of consent to a search, the demand for a warrant for police entry, or a consensual conversation with the resident outside the home." *Id.*, at 1006.

In *United States v. Camberos-Villapuda*, a consensual conversation between the law enforcement officers and the defendant occurred outside the defendant's home. No. CR. 13-40104, 2014 WL 12665782, at *2 (D.S.D. Aug. 22, 2014). There, officers suspected the defendant was involved in the distribution of drugs but did not have enough evidence to obtain a search warrant and thus elected to speak with the defendant in his backyard. *Id.*, at *1-2. The defendant appeared nervous, gave conflicting information, and was in possession of tools consistent with drug trafficking. *Id.*, at *2-3. Upon learning that other individuals were present in the residence, officers entered the home under exigency to perform a protective sweep both for officer safety and to prevent destruction of evidence. *Id.*, at *3. The court found that officers did not create the exigency by interviewing the defendant, that this intrusion was proper, and that their securement of the premises pending a search warrant was justified. *Id.*, at *5-6. In reaching its conclusion, the court noted "that general investigatory procedures, such as

when agents visit a residence with the intention of questioning a suspect, qualify as a legitimate law enforcement objection." *Id.*, at *4 (quoting *United States v. Gonzalez*, 441 Fed. App'x 404, 406 (8th Cir. 2011)).

Here, officers conducted a standard knock-and-talk with defendant, which is a common and accepted police tactic. Defendant voluntarily spoke with the officers, during which time the officers developed probable cause that defendant was involved in child exploitation and pornography. Defendant's continued requests to turn over his electronic devices later or to at least have time alone with them before the search gave the officers a reasonable basis to conclude that defendant would destroy evidence on those devices if given the opportunity. Thus, the officers seized defendant's devices and waited for a warrant to search them. The Court finds that although this tactic created the possibility of a scenario where defendant would be prompted to destroy evidence, such a scenario was not the probable result. *See Cisneros-Gutierrez*, 598 F.3d at 1006. Instead, as a result of their consensual conversation with defendant, officers made a limited intrusion only to the extent necessary to protect evidence. *See Camberos-Villapuda*, 2014 WL 12665782, at *6. The Court finds this tactic appropriate in light of the fact that the officers could not have obtained a search warrant earlier based on their previously stale information. *See id.*, at *2. Defendant's suggestion that the officers could have secured his home while obtaining a warrant is immaterial. (Doc. 43, at 4). In either case, the officers' conduct here was a measured intrusion based on probable cause developed during an appropriate investigative procedure. On these facts, the Court concludes that the officers acted properly and did not create or manufacture the exigency here.

The Court also finds that the officers here did not engage or threaten to engage in any conduct that violates the Fourth Amendment. Defendant argues that SA Maxted threatened to violate his Fourth Amendment rights by telling "[d]efendant that if he did

not provide consent to search his [devices] that they would do so whenever they wanted." (Doc. 43, at 4). SA Maxted told defendant that he would get a search warrant if defendant did not allow the officers to search defendant's devices. (*Id.*, at 31:42). At the end of the interview, defendant suggested the officers get a warrant. (*Id.*, at 41:40). Defendant then again offered to turn over the devices if given a specific time to do so. (*Id.*, at 42:30). SA Maxted replied "I'm not gonna tell you when I want it, I'll come over, I'll knock on the door, and . . . we'll go from there." (*Id.*, at 42:32) (pause represented by ellipses). The context shows that SA Maxted was merely stating that the search warrant process would not be scheduled at defendant's convenience. SA Maxted's statement reflects his frustration at defendant's continued instance that he would turn over the devices later despite the risk spoliation, but it is a far cry from a threat to violate defendant's constitutional rights. In other words, officers merely telling a suspect that the suspect will not have advanced notice of a lawful search is not a threat and does not violate the suspect's Fourth Amendment rights.

Thus, the Court **overrules** defendant's objections on this issue and **adopts** Judge Roberts' R&R without modification.

***C. Good Faith***

Last, defendant objects to the R&R's alternative finding that the *Leon* good faith exception saves the two search warrants issued after his July 3, 2019 interview with the officers. Defendant asserts that a reasonable officer would not have concluded that defendant's interview provided probable cause. (Doc. 43, at 5). Although defendant acknowledges the interview gave law enforcement some new information, he contends such information did not tie him or his electronic devices to child exploitation or pornography. (*Id.*).

In *Leon*, the Supreme Court "created the good-faith exception to the exclusionary rule." *United States v. Johnson*, 78 F.3d 1258, 1261 (8th Cir. 1996) (citing *Leon*, 468

U.S. at 922). In explaining the need to create a good faith exception to the exclusionary rule, the Supreme Court reasoned that:

> It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. Once the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law. Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations.

*Leon*, 468 U.S. at 921 (alteration, citation, and internal quotation marks omitted). Under *Leon*'s good-faith exception, the Fourth Amendment exclusionary rule is not to "be applied to exclude the use of evidence obtained by officers acting in reasonable reliance on a detached and neutral magistrate judge's determination of probable cause in the issuance of a search warrant that is ultimately found to be invalid." *United States v. Taylor*, 119 F.3d 625, 629 (8th Cir. 1997) (citing *Leon*, 468 U.S. at 905, 922-23). "[T]he exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates." *Leon*, 468 U.S. at 916.

The Eighth Circuit Court of Appeals has outlined four circumstances when an officer's reliance on a warrant would be unreasonable: (1) the officer's affidavit included information the officer knew was false or should have known was false; (2) the affidavit is so lacking in probable cause such that the officer's reliance was objectively unreasonable; (3) the judge failed to act in a neutral and detached manner; or (4) the warrant is so facially deficient that the officer cannot reasonably presume it to be valid. *See United States v. Phillips*, 88 F.3d 582, 586 (8th Cir. 1996) (citing *Leon*, 468 U.S. at 922).

None of these scenarios apply here. As discussed above, the Court finds that the interview did provide probable cause to believe defendant was involved in child exploitation and pornography and that evidence of such involvement would be present on his electronic devices. Even if probable cause was not met, however, officers possessed sufficient information such that it was reasonable for them to believe probable cause existed. Therefore, suppression here would not further the goal of deterring police misconduct.

Thus, the Court **overrules** defendant's objections on this issue and **adopts** Judge Roberts' R&R without modification.[8]

## *V. CONCLUSION*

For these reasons, the Court **sustains in part** and **overrules in part** defendant's objections (Doc. 43), **sustains** the government's objections (Doc. 44), **adopts** Judge Roberts' R&R (Doc. 34) with modification, and **denies** defendant's motion to suppress (Doc. 25).

**IT IS SO ORDERED** this 12th day of February, 2020.

C.J. Williams
United States District Judge
Northern District of Iowa

[8] Defendant also objects to the R&R's finding that evidence obtained as a result of the officers' seizure and search of defendant's devices need not be suppressed as fruit of the poisonous tree. (Doc. 43, at 4-5) (citing Doc. 34, at 19). Because the Court has found the seizure and search proper here, any evidence resulting from them is not tainted by any constitutional violation. Thus, suppression is also not warranted on this basis.

# UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA ) **JUDGMENT IN A CRIMINAL CASE**
)
**v.** ) Case Number: **0862 1:19CR00105-001**
)
**WILLIAM MEYER** ) USM Number: **18160-029**
)

■ **ORIGINAL JUDGMENT**
☐ **AMENDED JUDGMENT**
Date of Most Recent Judgment:
Reason for Amendment:

**Jill M. Johnston**
Defendant's Attorney

## THE DEFENDANT:

■ pleaded guilty to count(s) **1 of the Indictment filed on September 24, 2019**

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| **18 U.S.C. §§ 2251(a) and 2251(e)** | **Sexual Exploitation of Children** | **May 2019** | **1** |

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

**C.J. Williams**
**United States District Court Judge**
Name and Title of Judge

**September 4, 2020**
Date of Imposition of Judgment

Signature of Judge

September 4, 2020
Date

DEFENDANT: **WILLIAM MEYER**
CASE NUMBER: **0862 1:19CR00105-001**

## PROBATION

☐ The defendant is hereby sentenced to probation for a term of:

## IMPRISONMENT

■ The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
**360 months on Count 1 of the Indictment.**

■ The court makes the following recommendations to the Federal Bureau of Prisons:
**It is recommended that the defendant be designated to a Bureau of Prisons facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.**

**It is recommended that the defendant participate in the Bureau of Prisons Sex Offender Management Program.**

■ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant must surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Federal Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the United States Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **WILLIAM MEYER**
CASE NUMBER: **0862 1:19CR00105-001**

## SUPERVISED RELEASE

■ Upon release from imprisonment, the defendant will be on supervised release for a term of:
**5 years on Count 1 of the Indictment.**

## MANDATORY CONDITIONS OF SUPERVISION

1) The defendant must not commit another federal, state, or local crime.

2) The defendant must not unlawfully possess a controlled substance.

3) The defendant must refrain from any unlawful use of a controlled substance.
The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ■ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*

4) ■ The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

5) ■ The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*

6) ☐ The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **WILLIAM MEYER**
CASE NUMBER: **0862 1:19CR00105-001**

## STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10) The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11) The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

## SPECIAL CONDITIONS OF SUPERVISION

*The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:*

1. **The defendant must not knowingly have contact with children under the age of 18 (including through letters, communication devices, audio or visual devices, visits, electronic mail, the Internet, or any contact through a third party) without the prior written consent of the United States Probation Office. The United States Probation Office may work with the defendant and the defendant's family to set up supervised communications and visits with the defendant's biological and legally adopted children.**

2. **The defendant must not knowingly be present at places where minor children under the age of 18 are congregated, such as residences, parks, beaches, pools, daycare centers, playgrounds, and schools without the prior consent of the United States Probation Office.**

3. **The defendant must not have contact during the defendant's term of supervision with the individuals set forth at paragraph 143 of the presentence report, in person or by a third party. This includes no direct or indirect contact by telephone, mail, email, or by any other means. The United States Probation Office may contact the aforementioned individual(s) to ensure the defendant's compliance with this condition.**

4. **The defendant must allow the United States Probation Office to install computer monitoring software on any computer [as defined in 18 U.S.C. § 1030(e)(1)] that is used by the defendant. To ensure compliance with the computer monitoring condition, the defendant must allow the United States Probation Office to conduct initial and periodic monitoring and inspections of any computers [as defined in 18 U.S.C. § 1030(e)(1)] subject to computer monitoring. This monitoring and said inspections will be conducted to determine whether the computer contains any prohibited data prior to the installation of the monitoring software, whether the monitoring software is functioning effectively after its installation, and whether there have been attempts to circumvent the monitoring software after its installation. The defendant must warn any other people who use these computers that the computers may be subject to monitoring and inspections pursuant to this condition.**

5. **The defendant must pay any fine, restitution, and/or special assessment imposed by this judgment.**

6. **For as long as the defendant owes any fine, restitution, and/or special assessment imposed by this judgment, the defendant must provide the United States Probation Office with access to any requested financial information.**

7. **For as long as the defendant owes any fine, restitution, and/or special assessment imposed by this judgment, the defendant must not incur new credit charges or open additional lines of credit without the approval of the United States Probation Office unless the defendant is in compliance with the installment payment schedule.**

*Continued on following page.*

DEFENDANT: **WILLIAM MEYER**
CASE NUMBER: **0862 1:19CR00105-001**

## SPECIAL CONDITIONS OF SUPERVISION

***The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:***

8. **The defendant must not view, possess, produce, or use any form of erotica or pornographic materials, and the defendant must not enter any establishment where pornography or erotica can be obtained or viewed.**

9. **The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**

10. **The defendant must participate in a mental health evaluation, which may include an evaluation for sex offender treatment. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program. The defendant will be required to submit to periodic polygraph testing at the discretion of the United States Probation Office as a means to ensure that the defendant is in compliance with the requirements of the defendant's supervision or treatment program. The defendant must take all medications prescribed to the defendant by a licensed medical provider.**

11. **The defendant must not access an Internet connected computer or other electronic storage device with internet capabilities without the prior written approval of the United States Probation Office and based on a justified reason.**

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

_____ _____
Defendant Date

_____ _____
United States Probation Officer/Designated Witness Date

DEFENDANT: **WILLIAM MEYER**
CASE NUMBER: **0862 1:19CR00105-001**

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | Assessment | AVAA Assessment[1] | JVTA Assessment[2] | Fine | Restitution |
|---|---|---|---|---|---|
| **TOTALS** | **$ 100** | **$ 0** | **$ 5,000** | **$ 50,000** | **$ 0** |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| Name of Payee | Total Loss[3] | Restitution Ordered | Priority or Percentage |
|---|---|---|---|

**TOTALS** $ _____ $ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

[1]Amy, Vicky, and Any Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
[2]Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.
[3]Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **WILLIAM MEYER**
CASE NUMBER: **0862 1:19CR00105-001**

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

**A** ■ Lump sum payment of $ **100** due immediately, balance due

☐ not later than _____ , or
■ in accordance with ☐ C, ☐ D, ☐ E, or ■ F below; or

**B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

**C** ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

**D** ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

**E** ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

**F** ■ Special instructions regarding the payment of criminal monetary penalties:

**If any of the defendant's court ordered financial obligations are still owed while the defendant is incarcerated, the defendant must make monthly payments in accordance with the Bureau of Prisons Financial Responsibility Program. The amount of the monthly payments will not exceed 50% of the funds available to the defendant through institution or non-institution (community) resources and will be at least $25 per quarter. If the defendant still owes any portion of the financial obligation(s) at the time of release from imprisonment, the defendant must pay it as a condition of supervision and the United States Probation Office will pursue collection of the amount due pursuant to a payment schedule approved by the Court. The defendant must notify the United States Attorney for the Northern District of Iowa within 30 days of any change of the defendant's mailing or residence address that occurs while any portion of the financial obligation(s) remains unpaid.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant must pay the cost of prosecution.

■ The defendant must pay the following court cost(s): **The defendant must pay the Clerk of Court $5,000 for his court-appointed counsel fees. The defendant has paid this amount in full.**

☐ The defendant must forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

# United States Court of Appeals
For the Eighth Circuit

No. 20-2958

United States of America

*Plaintiff - Appellee*

v.

William Meyer

*Defendant - Appellant*

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: June 17, 2021
Filed: December 2, 2021

Before GRUENDER, BENTON, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

While talking with William Meyer outside his home, federal agents grew worried that, if he went back inside, he would destroy evidence. Rather than take that risk, they entered his home without a warrant and took two computers, a

cellphone, and a hard drive. The main question in this case is whether their actions violated the Fourth Amendment. We agree with the district court[1] that they did not.

I.

As part of an investigation named "Operation Dark Room," federal agents discovered financial ties between Meyer and individuals in the Philippines who were livestreaming sex acts involving children. To gather more information, two agents decided to visit Meyer at his home and knock on his door. During the course of the conversation, which took place in the agents' car, Meyer revealed a number of facts that aroused suspicion, including that he had personal and financial ties to the individuals involved in the abuse. When he further admitted that he used a computer and cellphone to contact them, the agents asked if he would be willing to turn those devices over for an examination.

Rather than categorically refusing, Meyer said he was willing to hand them over later, after he had a chance to "check [his] email and stuff." Once the agents expressed concern that a delay would give him a chance to erase what was on them, Meyer still refused to consent, this time because his house was "a mess" and "not . . . in any condition to entertain people." So after further discussion, he went back inside.

At that point, the agents sprang into action. Worried that Meyer would destroy evidence if they waited any longer, one of the agents called a prosecutor for advice on whether "an exigent circumstance existed." When he was told that it did, the agents again knocked on Meyer's door; searched his home for electronic devices; and seized two computers, a cellphone, and a hard drive. One of the agents then successfully applied for a search warrant.

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[1]The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa.



Appellate Case: 20-2958 Page: 2 Date Filed: 12/02/2021 Entry ID: 5103784

The search revealed a hoard of child pornography. The hard drive, for example, contained videos of minors performing sex acts on Skype, with Meyer shown watching in the corner of the screen. It also contained a number of lewd messages between Meyer and a minor girl, as well as evidence that he had sent money in exchange for the videos.

The evidence spelled trouble for Meyer, who moved to suppress everything the agents found. The district court denied the motion; accepted his conditional plea to one count of sexual exploitation of children, *see* 18 U.S.C. § 2251(a), (e); and sentenced him to 30 years in prison. On appeal, he challenges both the denial of his motion and the length of his sentence.

II.

The default rule for entering a home to search and retrieve evidence is to get a warrant first. *See Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). But when there is "a sufficient basis" to suspect that incriminating evidence will be destroyed, *United States v. Ramirez*, 676 F.3d 755, 760 (8th Cir. 2012), exigent circumstances exist, and the presence of probable cause allows officers to enter and search the home without one. The lone exception is when the officers themselves have created the exigency by "engaging or threatening to engage in conduct that violates the Fourth Amendment." *Kentucky v. King*, 563 U.S. 452, 462 (2011).

Meyer challenges the warrantless entry into his home at every step in this analysis. First, he claims that there was no probable cause. Second, he denies the existence of an exigency. And third, even if an exigency existed, he claims the agents created it. Each of these "challenges fall[s] into [the legal-question] category, so our review is de novo." *United States v. James*, 3 F.4th 1102, 1104 (8th Cir. 2021).

A.

On these facts, probable cause is not a close call. It "exists when[ever] . . . a reasonable person could believe [that] there is a fair probability that . . . evidence of a crime w[ill] be found" in the place to be searched. *Kleinholz v. United States*, 339 F.3d 674, 676 (8th Cir. 2003) (per curiam) (quotation marks omitted).

By the time the agents decided to enter Meyer's home, they had probable cause. *See Kaley v. United States*, 571 U.S. 320, 338 (2014) (explaining that probable cause "is not a high bar"). They knew that he: (1) had ties to the individuals who were livestreaming the abuse; (2) had stayed with them when he visited the Philippines; (3) had paid thousands to them and one of the minor victims; and (4) did not tell his wife about some of the money he sent, despite claiming that the payments were tied to his humanitarian work. It was not much of a leap from there to conclude that there was a "fair probability" that he was involved. *See United States v. Horne*, 4 F.3d 579, 589 (8th Cir. 1993) (explaining that officers have "substantial latitude" to draw "inferences" from what they know).

The same goes for the possibility that there would be incriminating evidence on Meyer's devices. *See United States v. Tellez*, 217 F.3d 547, 550 (8th Cir. 2000) (explaining that there must be "a nexus between the [illegal activity] and the place to be searched"). Meyer had already admitted to the agents that he used a computer and cellphone to communicate with the abusers and had stayed in regular contact with them. The agents also knew that his Skype username was "prettyvirginfilipino" and that the profile he used was a variant of the first name of one of the minor victims. Given that Meyer had already admitted that the devices were in his home, there was at least "a fair probability" that the agents would find "evidence of a crime" inside. *Kleinholz*, 339 F.3d at 676.

Just because Meyer had an innocent explanation for *some* of these facts did not mean the officers had to believe him. As the Supreme Court has put it, "probable cause does not require [officers] to rule out a suspect's innocent explanation for

suspicious facts." *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018). And here, the "circumstances" were suspicious enough that the agents could have reasonably concluded there was a "substantial chance" that Meyer was involved in "criminal activity," not charitable work. *Id.* at 586.

B.

Though a closer call, the agents also faced an exigency: they had a "sufficient basis" to reasonably believe that Meyer would "imminently destroy evidence." *Ramirez*, 676 F.3d at 760; *see also United States v. Knobeloch*, 746 F.2d 1366, 1367 (8th Cir. 1984). Meyer's suspicious answers, including his insistence that he have time alone with his devices before the agents could see them, is what led to a sense of urgency, a "now[-]or[-]never" scenario. *Riley v. California*, 573 U.S. 373, 391 (2014) (quoting *Missouri v. McNeely*, 569 U.S. 141, 153 (2013)); *see also United States v. Cisneros-Gutierrez*, 598 F.3d 997, 1004 (8th Cir. 2010) (observing that a suspect's "conduct" can create the exigency).

Consider what Meyer said and did. When asked whether he would allow an examination of his computer, he initially said no because he used it "all the time." Then, despite his professed need for it, he offered to let the agents examine it later, after he "check[ed] [his] email and stuff."

From there, Meyer's responses only became more suspicious. When the agents suggested that they accompany him inside and look at the devices together, his attention shifted to the tidiness of his house. His "house [was] a mess," he said, so he would need "a few minutes to clean up." And then, rather than remaining outside as requested while one of the agents made a call, Meyer instead went inside.

Knowing that data can be deleted at the touch of a button, the agents decided that they needed to act fast. *See Riley*, 573 U.S. at 391. Given Meyer's insistence that he have an opportunity to be alone with his devices first, they reasonably concluded that he was hiding something. And if they were to wait to conduct the

search, as he had suggested, the something that he did not want them to see would be gone.[2] So the agents reasonably determined that it was "now or never": "search . . . immediately," or forever lose their chance. *See Riley*, 573 U.S. at 391 (quotation marks omitted).

C.

It should also be clear by now that the agents did not create the exigency "by engaging or threatening to engage in conduct that violates the Fourth Amendment." *King*, 563 U.S. at 462. Knocking on a suspect's door to ask questions, a so-called "knock and talk," has long been a valid investigative technique, *see United States v. Spotted Elk*, 548 F.3d 641, 655 (8th Cir. 2008), so Meyer's argument focuses on what happened next.

1.

After the agents knocked on his door, Meyer insisted on speaking with them outside, so the conversation took place in the agents' car. Toward the end, one of the agents told Meyer that, "if I suspect that something's going on, . . . I can't just let people go in and have an opportunity to . . . destroy potential evidence." Then, after the possibility of getting a warrant came up and Meyer suggested that they come back later, the same agent said, "I'm not gonna tell you when I want it. I'll come over, I'll knock on the door, and we'll . . . go from there." According to Meyer, these two statements created the exigency by planting the idea of destroying

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[2]Meyer did more than just "stand on [his] constitutional rights." *King*, 563 U.S. at 470; *cf. Ramirez*, 676 F.3d at 762–64 (concluding that there were no exigent circumstances when the suspect merely declined to let the officers enter and then shut the door on them). Rather, he gave suspicious answers that led the agents to reasonably conclude that he wanted time alone with the devices for a reason he could not say out loud: to destroy evidence. *See United States v. Leveringston*, 397 F.3d 1112, 1116 (8th Cir. 2005) (noting that officers may draw reasonable inferences when evaluating whether exigent circumstances exist).

evidence in his mind and threatening to take his property at any time, with or without a warrant.

The most obvious problem with Meyer's theory is timing. By that point, Meyer had already made a number of suspicious comments, including offering multiple excuses for his refusal to cooperate. For the agents to have caused the exigency, they must have "manufacture[d]" or "create[d]" it. *Ramirez*, 676 F.3d at 761 n.3 (quotation marks omitted). They could not have manufactured or created an exigency that *already* existed.

Nor did either statement threaten to violate Meyer's Fourth Amendment rights. *See King*, 563 U.S. at 462. The first was just a response to his attempts to persuade the agents to return for the devices. And the second merely explained that, if the agents were to come back with a warrant, the search would not, as the district court put it, "be scheduled at [his] convenience."

2.

Nothing else the agents did that day created an exigency either. Meyer suggests that they spoke it into existence by raising the possibility that he would destroy evidence. But hypothesizing about what *Meyer* might do is not the same as threatening to engage in conduct that would violate his constitutional rights. *See id.* at 462. Besides, the agents were only saying out loud what they reasonably suspected was true based on what he had already said. His *responses*, in other words, are what created the exigency.

For similar reasons, the agents did not have to "act" like "members of the general public" when they spoke to him. Just because asking tough questions and closely scrutinizing the answers could lead a suspect to destroy evidence does not mean that someone else created the exigency. *See United States v. Newman*, 472 F.3d 233, 238–39 (5th Cir. 2006) (explaining that officers did "not manufacture an exigency by employing a legitimate investigative tactic"). Rather, the agents in this

case would have needed to do something more: "engag[e] or threaten[] to engage in conduct that violate[d] the Fourth Amendment." *King*, 563 U.S. at 462.

* * *

Long story short: probable cause existed, the exigency was real, and it was not of the agents' making. So even though the search was warrantless, it did not violate the Fourth Amendment.

III.

Nor do we need to remand for resentencing, even though the district court mistakenly told Meyer that he had "to persuade the court to vary downward." Meyer did not object at the time, so our review is for plain error. *See United States v. Pirani*, 406 F.3d 543, 549 (8th Cir. 2005) (en banc). Even assuming this statement was erroneous and that any error was plain, it did not affect Meyer's substantial rights. *See United States v. Henson*, 550 F.3d 739, 740 (8th Cir. 2008) (explaining that treating the advisory range as presumptive is "significant procedural error," but holding that the error may still be harmless (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)).

The remainder of the record makes clear that this statement did not play a role in the district court's analysis. The court stated, for example, that it had "considered all the [statutory sentencing] factors," including Meyer's "horrendous, egregious victimization of vulnerable victims," in an effort to "arriv[e] at a sentence that [was] sufficient but not greater than necessary to achieve the goals of sentencing." *See* 18 U.S.C. § 3553(a). It then went on to explain that there was no reason to vary downward because "the aggravating factors . . . vastly outweigh[ed] the mitigating factors." Given these other comments, we conclude that, even if the court erred, there is no "reasonable probability" that it affected Meyer's sentence. *United States v. Cottrell*, 853 F.3d 459, 463 (8th Cir. 2017).

IV.

We accordingly affirm the judgment of the district court.

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**UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTH CIRCUIT**

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No: 20-2958

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United States of America

Plaintiff - Appellee

v.

William Meyer

Defendant - Appellant

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Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:19-cr-00105-CJW-1)

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**JUDGMENT**

Before GRUENDER, BENTON and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 02, 2021

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

**Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.**

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States,* 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file pro se a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California,* 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petion for writ of certiorari.

**UNITED STATES COURT OF APPEALS**
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No: 20-2958

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 13, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans